

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

DEC 10 2014

OFFICE OF
MANAGING DIRECTOR

Dennis J. Kelly, Esq.
Law Office of Dennis J. Kelly
Post Office Box 41177
Washington, DC 20018

Applicant/Licensee: **PSI Communications, LLC**
Waiver of Payment Request: Financial Hardship
Disposition: **Dismissed and Denied** (47 C.F.R. §§
1.1162, 1.1164, 1.1166)
Station: WPUL (AM)
Fees: Fiscal Year (FY) 2014 Regulatory Fees
Date Request Filed: Sep. 23, 2014
Date Regulatory Fees Paid: Not Paid
Date Regulatory Late Fees Paid: Not Paid
Fee Control No.: RROG-000-14-15735
Amount Due: **See Fee Filer**

Dear Counsel:

This responds to Licensee's *Request*¹ for a "financial hardship" exemption from the payment of fiscal year 2014 annual regulatory fees" on the ground that Licensee's station, call sign WPUL, has been silent since February 18, 2014. As we discuss below, we dismiss and, in the alternative, deny the *Request* on several grounds. First, Licensee is not an exempt entity. Second, Licensee failed to follow the Commission's regulatory procedure requiring the applicant either to pay the required regulatory fee and then request waiver and refund or, in the alternative, to submit a separate petition to defer payment, supported by documentation of financial hardship. Next, because Licensee failed to pay the fee or submit a proper petition to defer, the fee is delinquent and Licensee is a delinquent debtor. Finally, after looking to the merits of the *Request*, we deny, because Licensee failed to provide evidence of financial hardship.

On September 23, 2014, Licensee filed a two-page letter asserting, in relevant part, "pursuant to [47 C.F.R.] Section 1.1166(a)(2), [Licensee] request[s] a 'financial hardship' exemption from payment of fiscal year 2014 annual regulatory fees [on the ground that] Station WPUL has been silent since February 18, 2014 ... it has no broadcast revenues for over seven months[, which] by definition ... means that the station is experiencing financial hardship" Licensee did not either pay the fee or include a separate "petition to defer payment due to

¹ Letter from Dennis J. Kelly, Esq., Law Office of Dennis Kelly, Post Office Box 41177, Washington, DC 20018 to Marlene Dortch, Office of the Secretary, FCC, Washington, DC 20553, Attn: Office of Managing Director, The Portals, Room 1-A625 (Sep. 23, 2014) (*Request*).

financial hardship, supported by documentation of the financial hardship.”² Licensee’s *Request* presents several problems that lead to dismissal and denial.

First, Licensee seeks an exemption from paying the fee, but without establishing a proper legal basis. Under 47 U.S.C. § 159(h) and 47 C.F.R. § 1.1162, exemption from paying the regulatory fees is extended to applicants, permittees, or licensees in the amateur radio service, those who qualify as government entities, those who qualify as nonprofit entities, those in the special emergency radio, and those that qualify as noncommercial educational broadcast stations. Nothing in Licensee’s submission indicates that it qualifies for an exemption, thus on that ground the *Request* is denied.

Next, Licensee failed to comply with our rule at 47 C.F.R. § 1.1166 that sets forth the procedure for seeking relief from paying the annual regulatory fee on the ground that Licensee is “experiencing financial hardship at the present time.” Specifically, section 1.1166(c) provides:

Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

Licensee failed either to pay the fee or to include with its *Request* a properly supported petition to defer payment. Accordingly, as set forth in section 1.1166(c), we dismiss.

Next, we also dismiss the *Request* under 47 C.F.R. § 1.1164(e).³ Because Licensee failed to submit in a timely manner either the full annual regulatory fee or a properly supported petition to defer payment, when the deadline for paying the fee passed without receiving payment, Licensee was delinquent. As a result, we dismiss the pending application for relief, and notify Licensee that we have imposed the statutory penalty⁴ and charges of collection,⁵ which accrue until Licensee pays the debt in full. A petition for reconsideration or an application for review of a fee determination will not relieve Licensee from the requirement to submit full and proper payment of the underlying fee and charges.⁶ Moreover, this provides notice that under the law,⁷ we will

² 47 C.F.R. § 1.1166(c).

³ 47 C.F.R. § 1.1164(e) provides, “Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.”

⁴ 47 U.S.C. § 159; 47 C.F.R. § 1.1166; *Waivers, Reductions and Deferments of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) (“The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. * * * The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.”).

⁵ 31 C.F.R. § 3717.

⁶ 47 C.F.R. § 1.1167(b).

⁷ See 47 C.F.R. § 1.1901, *et seq.*

apply debt collection procedures.⁸ Licensee should refer to the Commission's fee filer website to determine a payoff and immediately make full payment with a Form 159.⁹

In addition to notifying Licensee it is delinquent in paying a debt owed the United States, this notifies Licensee that under 31 U.S.C. § 3711(g), without further notice, and usually within 180 days or less of delinquency, we will transfer the delinquent debt to Treasury, which will initiate collection action through private collection activities and assess additional charges. In addition, we may refer the debt to the Department of Justice, which may result in litigation and additional costs. Moreover, under 31 U.S.C. § 3716, 31 C.F.R. § 285.5, and 47 C.F.R. § 1.1912, some or all of the debt may be collected by non-centralized or centralized administrative offset. Also, under 31 U.S.C. § 3711(e), this debt and Licensee's payment history will be reported to credit reporting information bureaus. Because we have furnished notice here, Licensee may not receive another notification of this process. Finally, Licensee will be red lighted¹⁰ until it pays all delinquent debts or it makes other satisfactory arrangements.¹¹

This ends the matter; however, we briefly address an alternative reason for denying the *Request*. In establishing a regulatory fee program, the Commission recognized that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee. Such fees may be waived, reduced or deferred, but only upon a showing of good cause and a finding that the public interest will be served thereby.¹² The Commission has narrowly interpreted its waiver authority to require a showing of compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹³ Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public.¹⁴ "Mere allegations or documentation of financial loss, standing alone," do not suffice and "it [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."¹⁵ In reviewing a showing of financial hardship, the Commission relies on a range of financial documents including a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the

⁸ See 31 C.F.R. § 3717.

⁹ Form 159 with complete instructions is at <http://www.fcc.gov/fees/form159.html>.

¹⁰ See 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission ..."); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").

¹¹ See 47 C.F.R. § 1.1914 ("If a debtor is financially unable to pay a debt in one lump sum, the Commission, in its sole discretion, may accept payment in regular installments.").

¹² 47 U.S.C. § 159(d); 47 C.F.R. § 1.1166. See also Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for Fiscal Year 1994, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995).

¹³ *Id.*, 9 FCC Rcd at 5344 ¶ 29.

¹⁴ *Id.*, 10 FCC Rcd at 12761-62 ¶ 13.

¹⁵ *Id.*

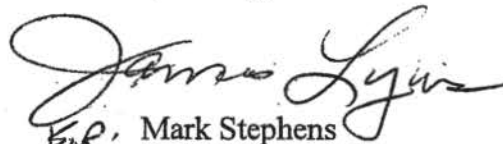
station lacks sufficient funds to pay the regulatory fee and maintain service to the public.¹⁶ Thus, for example, even if a station loses money, any funds paid to principals and deductions for depreciation or amortization are considered funds available to pay the fees.

Licensee failed to establish both prongs of our requirement, *i.e.*, good cause and that waiver overrides the public interest in collecting the fee.¹⁷ Moreover, Licensee did not carry its burden¹⁸ of demonstrating compelling and extraordinary circumstances that outweigh the public interest in recouping the Commission's regulatory costs.¹⁹

Licensee's mere assertion that the station has been silent since February 18, 2014, is insufficient to show financial hardship. Indeed, Licensee's Notification of Suspension of Operations/Request for Silent STA to the Commission, FCC File No. BLSTA-20140305AKD, explains the reason for suspension is "technical" to make "repairs."²⁰ Nothing here establishes financial hardship or good cause.²¹ Accordingly, we deny licensee's *Request*.

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


For: Mark Stephens
Chief Financial Officer

¹⁶ *Id.*

¹⁷ 47 C.F.R. § 1.1166.

¹⁸ *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971); *Bartholdi Cable Co., Inc. v. FCC*, 114 F.3d 274, 280 (D.C. Cir. 1997) ("petitioner . . . has the 'burden of clarifying its position' before the agency."). See also 47 C.F.R. § 1.16 (An applicant is responsible for the continuing accuracy and completeness of information furnished.).

¹⁹ *Accipter Communications, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 18239, 18240 (2001) ("in applying the good cause requirement, we have stated that waivers will be permitted 'on a case by case basis in extraordinary and compelling circumstances upon a showing that a waiver . . . would override the public interest in reimbursing the Commission for its regulatory costs.' Implementation of Section 9 of the Communications Act, 9 FCC Rcd 5333, 5344 ¶ 29 (1994)."). Cf. *Phoenix Broadcasting, Inc., Memorandum Opinion and Order*, 18 FCC Rcd 26464, 26466 (2003).

²⁰ File No. BLSTA-20140305AKD ("THE STATION NEEDS REPAIRS, [Licensee] DETERMINED . . . THE BEST COURSE OF ACTION WAS TO GO SILENT AND SEEK A SPECIAL TEMPORARY AUTHORITY (STA) TO REMAIN SILENT UNTIL THE REPAIRS CAN BE MADE. THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY WOULD BE WELL SERVED BY GRANTING WPUL A 180 DAY SILENT STA.").

²¹ 9 FCC Rcd at 5344 ¶ 29.